IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5323 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UDAY MOHANTY

Versus

TOWN PLANNING DEPARTMENT

Appearance:

1. Special Civil Application No. 5323 of 1992

MR RR MARSHALL for Petitioner No. 1

MR PRASHANT G DESAI for Respondent No. 1-2

MR UTPAL M PANCHAL for Respondent No. 3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 17/04/2003

ORAL JUDGEMENT

The petitioner, in this petition, has challenged the notice dated 30-7-1992 issued by the Town Planning

Department of Surat Municipal Corporation, Surat, the respondent No.1 herein, under Section 68 of the Gujarat Town Planning and Urban Development Act, 1976 read with Town Planning Rules, 1979, directing the petitioner to vacate and remove the hut, otherwise action of removing the petitioner forcibly would be taken. The petitioner had also annexed a list of other similarly situated persons living in huts and since they could not afford to file separate petition, their names are included in the said list annexed to the petition and similar prayer is made with respect to these persons also.

2) It is the case of the petitioner that the petitioner and all other persons mentioned in the list are residing in the huts since last more than 10 to 15 years and that the respondent-Corporation has recognized the fact that they were residing on this land and pass receipts for the tax paid by the petitioner and others. It was further stated that the ration cards have also been issued in their names, indicating the fact that the petitioner and others are residing on the land bearing plot No.8, Final Plot No.7/B-1/B-2 etc. It was further stated that the impugned notice issued by the Town Planning Department was clearly contrary to the law and against the letter and spirit of the Act. It was further stated that no opportunity of personal hearing or putting forward the case of the petitioner, as well as others was given and hence the action is clearly in violation of the principles of natural justice and also contrary to the Article 14 of the Constitution of India. It is in the above background, the petitioner has challenged the aforesaid notice before this Court in this petition filed under Article 226 of the Constitution of India.

3) This Court had issued the notice on 7-8-1992 and the petition was admitted on 8-9-1992. While admitting the petition, this Court has observed that in view of the decision of the Supreme Court reported in 1985 GLR page 883, it appears that respondent-Corporation has not followed the procedure as laid down under the appropriate provisions of the Act and hence interim relief granted earlier was ordered to be continued till further orders. While passing the aforesaid order, this Court has also considered the stand taken by the respondent-Corporation in its affidavit in reply.

4) The respondent-Corporation has filed the affidavit in reply through Deputy Town Development Officer. It is stated in the said affidavit in reply that the Town Planning Scheme No.4 (Ashwinikumar Road) was already sanctioned by the State Government vide

Notification dated 30th April, 1982. It was further stated that the petitioner and other persons were served with the notice for eviction under the Town Planning Rules. It was further stated that there was no breach of the principles of natural justice as the petitioner and other persons were served with the showcause notice dated 18-3-1992. Since the compliance of the said notice was not made, another notice was issued on 16-6-1992 for personal hearing, which was kept on 23-6-1992. Despite service of the said notice, neither the petitioner nor other persons availed the opportunity of personal hearing. The petitioner has not disclosed this material fact while filing the present petition before this Court and hence, the petition is required to be dismissed on the ground of suppression of facts. It was further stated that the respondent-Corporation was implementing the scheme, which was sanctioned by Notification in the year 1982. In the said Town Planning Scheme No.4, some portion of original plot No.8 was in Final Plot No.7/B/1 and in the town planning record there was no mentioned about any legal right of the petitioner with respect to the original plot No.8 as tenants. It was further stated that the petitioner and other occupiers of the said land have encroached upon the Final Plot No.7/B/1 and in this view of the matter, the petitioner and other persons are not entitled to any protection from this Court and hence it is submitted that the petition is deserved to be dismissed.

5) An affidavit in reply is also filed on behalf of Shri Chhaganlal Girdharlal, who is impleaded as respondent No.3, pursuant to the Court's order dated 7-8-1992. In the said affidavit in reply, it was stated that respondent No.3 was the original owner of the land bearing revenue Survey No.338 northern part of Katar Gam and after commencement of the Act, the said area came within the purview of the Town Planning Scheme No.4 of Ashwinikumar Road. Pursuant to the said Town Planning Scheme the respondent No.3's revenue survey number was re-numbered as original Plot No.7/B and against this original plot the respondent No.3 was allotted Final Plot No.7/B/1 and 7/B/2. It was further stated that the respondent No.3 had handed over the possession of his original plot No.7/B and therefore, the respondent No.3 had got a legitimate right over the allotted final plot being No.7/B/1 and 7/B/2 and if the possession of the said final plot could not be handed over to the respondent No.3, his legitimate right could suffer and the same cannot be compensated in any terms. It was further stated that it was the duty of the respondent-Corporation to hand over the peaceful and

vacant possession and the said question was raised before this Court in Special Civil Application No.4696/1985 in the case of Nanuben Oghadbahi and others V/s. Ahmedabad Municipal Corporation and others, this Court by its order dated 28th June, 1993 directed the respondent to remove the unauthorized structure and to hand over the vacant and peaceful possession to the owner of the land. It was further stated that though the respondent No.3 was having legitimate right over the land in question, he could not develop the same because there was an unauthorised occupation of the petitioner and other persons on the land in question and as a result thereof, the legitimate right of the respondent No.3 on the land in question was adversely affected. It was, therefore, stated that the petition is required to be dismissed and the possession of the land in question should be ordered to be given to the respondent No.3.

6) Heard Mr.R.R.Marshall, learned advocate appearing for the petitioner, Mr.P.G.Desai, learned advocate appearing for respondent-Corporation and Mr.Utpal M.Panchal for respondent No.3. Mr.Marshall has reiterated all his submissions, which were made in the petition and strongly urged that the petitioner's possession over the land should be protected. On the other hand, Mr.Desai, learned advocate appearing for respondent-Corporation and Mr.Utpal M.Panchal have strongly objected to the petition and it was stated that since proper procedure was followed by the Corporation and Town Planning Scheme has already been sanctioned long back and since the petitioner and other persons did not have any legitimate right over the land and since they are encroachers, they should not be allowed to stay over the said land and possession of the said land should be given to the respondent No.3, as the same was allotted to him under the Town Planning Scheme. Mr.Desai has further relied on the decision of the Hon'ble Supreme Court in the case of M/s. Babubhai & Co. and others V/s.State of Gujarat and others reported in 1985(2) GLR 883, wherein while upholding the constitutional validity of Section 54 of the Bombay Town Planning Act and Rule 27 of Bombay Town Planning Rules, the Hon'ble Supreme Court has held that "the power conferred upon the Local Authority is a quasi-judicial power, which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order which implies giving of reasons and that ensures the application of mind to only germane or relevant material on the record eschewing

matter extraneous and irrelevant. It was further held that any order of summary eviction based on any extraneous, non-germane, irrelevant or mala fide considerations, would be subject to the writ jurisdiction of Court."

Considering the facts of the case, as well as the decision of the Hon'ble Supreme Court, Mr.Desai has strongly contended that the petitioner does not deserve any relief from this Court and this petition is to be dismissed with costs.

7) After having heard the learned advocates appearing for the respective parties and after having gone through the record of the case and after perusing the pleadings contained in the petition as well as affidavit in reply and also after having gone through the authority relied on by the learned advocates appearing for the respondents, I am of the view that despite the proper notices given by the respondent-Corporation neither any reply was filed nor any explanation was tendered by the petitioner. The petitioner was not in a position to state as to in what capacity and under what right he was occupying the said land. The unauthorised occupation for a period of 10 to 15 years, as alleged in the petition, would not confer any legal right on the petitioner or any other similarly situated persons and on that basis they cannot claim their ownership or occupancy over the land. There is also no dispute about the fact that the town planning scheme was sanctioned much earlier and under that sanctioned scheme the disputed land was allotted to the respondent No.3 and since the respondent No.3 has already handed over the vacant possession of his original plot, he is certainly entitled to this newly allotted plot, over which the possession was retained by the petitioner.

8) In this view of the matter and having regard to the facts and circumstances of the case, I am of the view that there is no merits or substance in the petition and hence the petition is dismissed. Rule is discharged. Interim relief granted earlier is vacated. However, looking to the facts of the case, there will be no order as to costs.

(K.A.Puj, J.)
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